

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

FRIDAY, THE TWENTY SIXTH DAY OF JUNE
TWO THOUSAND AND TWENTY

PRESENT

THE HONOURABLE DR. JUSTICE SHAMEEM AKTHER

TR.C.M.P.Nos. 97 AND 100 OF 2019

COMMON C.T :

Between:

Mrs. Syeda Nishath Fatima, W/o. Mohd. Abdul Raof, Aged about 33 years, Occ Household, R/o. H.No.9-4-110/3/77, Virasthnagar, Bal Reddynagar, Tolichowki, Hyderabad-500 008

...PETITIONER/RESPONDENT

AND

Mohammed Abdul Raof, S/o. Mohd. Abdul Mannan, Aged about 40-years, Occ Pvt. Service, R/o. H.No.22-1-698, Noorkhan Bazar, Hyderabad

...RESPONDENT/PETITIONER

TR.C.M.P.No.97 of 2019 :

Petition Under Section 24 of the C.P.C. Praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to transfer the F.C.O.P.No.314 of 2019 on the file of the Judge Family Court, City Civil Court, Hyderabad to Family Court, Nampally, Hyderabad, in the interest of justice.

IA NO: 1 OF 2019 IN TR.C.M.P.NO.97 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including the appearance of the petitioner in F.C.O.P.No.314 of 2019 on the file of the Judge, Family Court, City Civil Court, Hyderabad in the interest of Justice.

TR.C.M.P.No.100 of 2019 :

Petition Under Section 24 of the C.P.C. Praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to transfer the G.W.O.P.No.329 of 2019 on the file of the Judge Family Court, City Civil Court, Hyderabad to Family Court, Nampally, Hyderabad, in the interest of justice.

IA NO: 1 OF 2019 IN TR.C.M.P.NO.100 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to stay all further proceedings including the appearance of the petitioner in G.W.O.P.No.329 of 2019 on the file of the Judge, Family Court, City Civil Court, Hyderabad in the interest of Justice.

Counsel for the Petitioner in both Tr.C.M.Ps: SRI. C.SHARAN REDDY

Counsel for the Respondent in both Tr.C.M.Ps : MD FASEEHUDDIN

The Court made the following: COMMON ORDER

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

Transfer C.M.P Nos.97 and 100 of 2019

COMMON ORDER:

Since the facts of the case, parties to the litigation and the contentions raised in both these petitions are similar, both these petitions are disposed of by this common order.

2. Tr.C.M.P.Nos.97 and 100 of 2019 are filed under Section 24 of the Code of Civil Procedure, 1908 (CPC), by the petitioner/wife, requesting to withdraw FCOP No.314 of 2019 and GWOP No.329 of 2019 pending on the file of Judge, Family Court, City Civil Court, Hyderabad, and transfer them to the file of Judge, Family Court, Nampally, Hyderabad, for trial and disposal, in accordance with law.

3. Heard the learned counsel for both sides and perused the record.

4. Learned counsel for the petitioner/wife would contend that criminal case and domestic violence case filed by the petitioner/wife are pending before the Courts situated at Nampally, Hyderabad. The petitioner/wife is a poor lady and it is causing inconvenience for her to attend the cases at different places. Therefore, if the subject FCOP and GWOP pending on the file of Judge, Family Court, City Civil Court, Hyderabad, are transferred to the file of Judge, Family Court, Nampally, Hyderabad, it will be convenient for the petitioner/wife to attend all the cases at

one place and ultimately prayed to allow both the Tr.C.M.Ps as prayed for.

5. On the other hand, learned counsel for the respondent/ husband would submit that the distance between the Family Court, Nampally and City Civil Court, Hyderabad, is hardly 3 to 4 kilometres. The triable issues/charges in all the cases are different and distinct. Therefore, there are no sustainable grounds to consider the request of the petitioner and ultimately, prayed to dismiss both the Tr.C.M.Ps.

6. In view of the submissions made by both sides, the point for determination is:

"Whether FCOP No.314 of 2019 and GWOP No.329 of 2019 pending on the file of Judge, Family Court, City Civil Court, Hyderabad, can be withdrawn and transferred to the file of Judge, Family Court, Nampally, Hyderabad, for trial and disposal, in accordance with law?"

7. **POINT**: The material placed on record reveals that the respondent/husband has filed the subject FCOP No.314 of 2019 before the Judge, Family Court, City Civil Court, Hyderabad, against the petitioner/wife, under Section 26 of CPC r/w Order I and II CPC r/w Section 7 of the Family Courts Act, 1984, seeking restitution of conjugal rights and also filed GWOP No.329 of 2019 before the same Court, under Section 7, 10 and 25 of Guardian and Wards Act, 1890 r/w Section 7 of the Family Courts Act, 1984, seeking to appoint him as guardian of the two minor male children namely Mohd. Abdul Naafay and Mohd. Abdul Raafay

and grant custody of the said minor children to him. The petitioner/wife filed D.V.C. before the IV Metropolitan Magistrate, Nampally, Hyderabad, besides lodging a report with the WPS, CCS, Hyderabad, under Section 498-A, 406 IPC and Sections 4 & 6 of D.P.Act, against the respondent/husband (Crime No.16 of 2019). The contention of the petitioner/wife is that she is a poor lady and it is causing inconvenience for her to attend the cases at different places.

8. Here, it is apt to refer to the decision of the erstwhile High Court of Judicature at Hyderabad, for the State of Telangana and the State of Andhra Pradesh, reported in ***Chejerla Srilakshmi Vs. Chejerla Ramesh Babu***¹, wherein, the erstwhile common High Court for the States of Telangana and Andhra Pradesh, relying on various decisions of the Hon'ble Apex Court, held as under:

"The Apex Court took note of inconvenience being caused to the parties but not the inconvenience to the wife alone, considering the facts and circumstances of the case adverting to the earlier judgment rendered in "Ram Gulam Pandit v. Umesh J. Prasad" and "Rajwinder Kaur v. Balwinder Singh" (as referred in the judgment) and opined that all the authorities are based on the facts of the respective cases and they do not lay down any particular law which operates as a precedent. Thereafter, it noted that taking advantage of the leniency shown to the ladies by this Court, number of transfer petitions are filed by women and, therefore, it is required to consider each petition on merit. Then, the Court dwell upon the fact situation and directed that the husband shall pay all travel and stay expenses to the wife and her companion

¹ 2018 (4) ALD 162

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for each and every occasion whenever she was required to attend the Court. From the aforesaid decision, it is quite vivid that the Court felt that the transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner."

9. In the aforementioned decisions, it has been pointed out that in a petition to transfer a case from one Court to another Court under the provisions of Hindu Marriage Act, 1955, it is the inconvenience of both the parties that is to be taken into consideration, but not the inconvenience to the wife alone and that transfer petitions are to be considered on their own merits and not to be disposed of in a routine manner. As far as the facts and circumstances of the instant case are concerned, the grounds putforth by the petitioner/wife are that she is a poor lady and it is causing inconvenience for her to attend the cases at different places. Admittedly, the issues/charges in the criminal case, domestic violence case, F.C.O.P and G.W.O.P are different and they are required to be dealt with by the Courts, where they are pending. Since the distance between the Family Court, City Civil Court, Hyderabad and Family Court, Nampally, Hyderabad, is only 3 to 4 kilometres. It does not cause any inconvenience to the petitioner/wife. Furthermore, if the petitioner/wife has paucity of funds, she has to workout the remedies available under law. The grounds advanced on behalf of the petitioner/wife, are not worth consideration to grant the reliefs sought for. The Transfer Civil Miscellaneous Petitions are devoid of merits and are liable to be dismissed.

10. In the result, both the Transfer Civil Miscellaneous Petitions are dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in these Transfer CMPs, shall stand closed.

//TRUE COPY//

Sd/-B.SATYAVATHI
ASSISTANT REGISTRAR
SECTION OFFICER

To,

1. The Judge, Family Court, City Civil Court, Hyderabad.
2. One CC to Sri C.Sharan Reddy ,Advocate (OPUC)
3. One CC to Sri Md.Faseehuddin ,Advocate (OPUC)
4. Two CD Copies

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HIGH COURT

DR.SA,J

DATED:26/06/2020



COMMON ORDER

TR.C.M.P.No.97 AND 100 of 2019

DISMISSING THE TR.C.M.P.
WITHOUT COSTS.

AM (5)
8/7/2020